

# EXHIBIT II

## Special Interests - Indian Tribal Businesses

(Loss of State Sales, Tobacco and Fuel taxes on Sales to Non-tribal Members)

Enclosed:

- Letter from Clay Smith, Deputy Attorney General, response to questions on Indian Law.
- Letter from Dan John, Tax Policy Administrator, State Tax Commission, on State taxation authority within Indian Reservations.



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

October 9, 2002

Hon. Hal Bunderson  
Idaho State Senate  
P.O. Box 83720  
Boise, ID 83720-0081

Re: Federal Indian Law Inquiries

Dear Senator Bunderson:

Attorney General Lance has asked me to review and respond to the several questions contained in your letter dated August 20, 2002. Those questions raise federal Indian law issues and can be responded to in general terms. I stress on the outset, however, that while the overarching legal principles are relatively straightforward, their application in specific fact situations is often difficult. I also must add that this letter should not be considered as the Attorney General's views. The discussion instead contains only my analysis of relevant law.

Your questions relate to four categories of concern: "Indian" status, state taxation authority within Indian reservations, responsibility for social costs attendant to the unique legal status of Indians, and various economic and population data. I will address each category separately. In that regard, I understand that Attorney General Lance has given you a copy of the *American Indian Law Deskbook* (2d ed. 1998). That treatise has a detailed discussion of the first two categories, and I have attempted to draft my analysis in a manner that complements the more detailed discussion of "Indian" status and taxation in Indian country contained in, respectively Chapter 2 and Chapter 11 of the *Deskbook*. In particular, extensive citations of statutes and cases are omitted in this letter because they appear in the *Deskbook*.

I. "Indian" Status

A. General Considerations

"Indian" status arises from the existence of a "special relationship" between the Federal Government and an individual by virtue of the person's status as a descendant of

peoples who inhabited the United States prior to European contact in the fifteen century. That special relationship is characterized by the existence of a trust responsibility. The trust responsibility, in turn, derives from the guardian-ward relationship that an 1831 United States Supreme Court decision found to exist between the United States and Indian tribes. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). Although much has changed with respect to the relationship of "Indians" with the Federal Government over the last 170 years, this trust relationship remains the central component of Indian law and the principal feature of "Indian" status.<sup>1</sup>

"Indian" status today cannot be divorced from this historical heritage. There remains a requirement that a person claiming "Indian" status be able to trace ancestry back to individuals who would have been recognized as Indians at the time of the Nation's formation. This requirement is reflected in the most important statutory definition of "Indian"—section 19 of the 1934 Indian Reorganization Act ("IRA"). That section provides in part that the term "Indian," as used throughout the IRA, means "all persons of Indian status who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood." 25 U.S.C. § 479. Thus, under this statute a person is an "Indian" if he or she (1) was a member of an Indian tribe at the time of the IRA's enactment, (2) is a descendant of such a member if the member was residing within an Indian reservation on June 1, 1934, or (3) has at least one-half "Indian blood." See 25 C.F.R. § 5.1 (defining "Indian" status for purposes of IRA's employment preference within Bureau of Indian Affairs). Although this definition has legal significance only in the context of the IRA's implementation, it embodies congressional recognition that "Indian" status has at its core an ancestral or "blood" component. This conclusion flows inescapably from the fact that the definition does not demand an actual political affiliation with a tribe for *descendants* of tribal members who resided on a reservation when the IRA was adopted or for persons with fifty percent or more "Indian blood."

Nevertheless, most "Indian" status issues arise outside the context of the IRA and are largely determined in litigation under federal common law standards formulated by courts. The most significant example of this phenomenon is criminal law. The two core federal statutes—the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153—use the term "Indian" but do not define it. It comes as no surprise that federal courts, like Congress, have adopted a standard for determining "Indian status" that

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<sup>1</sup> One quite significant change is the fact that, until 1924, most Indians were not deemed citizens of the United States. Congress enacted legislation in that year that extended citizenship to all "person[s] born in the United States to a member of an Indian . . . tribe." 8 U.S.C. § 1401(b). A tribal member therefore has a political affiliation not only with a tribe but also with the Nation and the member's resident State.

requires at least some amount of Indian blood as a precondition to Indian status. They additionally require another element: federal governmental or tribal recognition as an "Indian." This two-part test is followed in Idaho state court and was applied recently by the Court of Appeals in *Lewis v. State*, No. 27594, 2002 WI. 1893513 (Idaho Ct. App. Aug. 19, 2002). The *Lewis* decision arose from denial of a postconviction relief petition filed by a prisoner whose mother was a "full-blooded Indian" and his father was a non-Indian. He was convicted of murder and burglary for a crime occurring on the Fort Hall Reservation and would have been subject to exclusive federal criminal jurisdiction under the Major Crimes Act if deemed an Indian. Notwithstanding the fact that Lewis's Indian blood was one-half, the Court of Appeals concluded he was not an Indian because he failed to satisfy the second prong of the two-part test. Among other considerations, the court pointed to the fact that Lewis had moved from the Reservation as a young child, maintained no relationship with the Shoshone-Bannock Tribes, had little contact with his Indian relatives, and never sought federal assistance due to alleged Indian status. Consequently, although Lewis would appear to qualify as an "Indian" for IRA purposes, he did not constitute an Indian for purposes of federal criminal jurisdiction.

*Lewis* represents the difficulty that can attend determination of "Indian" status. Most such determinations are less complicated. Although tribal membership is not a requirement for "Indian" status, its presence almost always establishes the individual as an Indian since virtually all tribes require ancestral relationship to a tribal member as a membership condition and since tribal recognition as a member satisfies the second element of the common law test. See John Rockwell Snowden *et al.*, *American Indian Sovereignty and Naturalization: It's a Race Thing*, 80 Neb. L. Rev. 171 (2001). Some federal statutes also define "Indian" for purposes of their limited application with reference to membership, or eligibility for membership, in a federally recognized tribe. Tribes have exclusive authority to adopt membership criteria absent congressional intervention which, to date, has not occurred. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). These determinations usually are made in accordance with standards set out in tribal constitutions, and tribes have discretion in establishing such standards. Carole Goldberg, *Members Only? Designing Citizenship Requirements for Indian Nations*, 50 U. Kan. L. Rev. 437 (2002).

B. "Indian" Status Under Particular Federal Statutes And Programs

For persons who are not tribal members but seek access to federal programs or protection under federal law, "Indian" status must be determined by the responsible agency or court in accordance with any standards supplied by the applicable federal statute or regulations. As an example, the Indian Civil Rights Act defines "Indian" for purposes of that statute's provisions as "any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, Title 18, if that person

were to commit an offense listed in that section in Indian country to which that section applies." 25 U.S.C. § 1301(4). Congress thereby incorporated into the statutory definition the *judicial* construction given to the term "Indian" in § 1153. Another example is the regulations issued by the Department of Health and Human Services with respect to eligibility for Indian Health Services. They specify as eligible

persons of Indian descent belonging to the Indian community served by the local facilities and program. Services will also be made available, as medically indicated, to a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through postpartum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. The Service will also provide medically indicated services to non-Indian members of an eligible Indian's household if the medical officer in charge determines that this is necessary to control acute infectious disease or a public health hazard.

42 C.F.R. § 136.12(a)(1); *see also id.* § 136.1 ("Indian includes Indians in the Continental United States, and Indians, Aleuts and Eskimos in Alaska"). The regulations state further that generally "an individual may be regarded as within the scope of the Indian health and medical service program if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction." *Id.* § 136.12(2); *see also* Indian Health Servs. Manual § 2-1.2 (describing eligibility criteria). Ancestry, but not tribal membership, is thus an essential component of "Indian" status for health services purposes. The relevant statute itself does not define "Indian." 42 U.S.C. §§ 2001-2004b.

Your letter specifically inquires about "Indian" status prerequisites in two areas—education and bidding preferences. As defined in the No Child Left Behind Act, Pub. L. No. 107-110, § 7151, 115 Stat. 1425, 1932 (2002) (as codified at 20 U.S.C. § 7491(3)), the term "Indian" means any individual who is:

- (A) a member of an Indian tribe or band, as membership is defined by the tribe or band, including--
  - (i) any tribe or band terminated since 1940; and
  - (ii) any tribe or band recognized by the State in which the tribe or band resides;

- (B) a descendant, in the first or second degree, of an individual described in subparagraph (A);
- (C) considered by the Secretary of the Interior to be an Indian for any purpose;
- (D) an Eskimo, Aleut, or other Alaska Native; or
- (E) a member of an organized Indian group that received a grant under the Indian Education Act of 1988 as in effect the day preceding October 20, 1994.

This definition covers a broad range of educational programs provided by the United States Department of Education under Title 20 of the United States Code. As is apparent from the provision's text, an essential component of "Indian" status is some degree of ancestral relationship.

A wide range of bidding preferences for socially and economically disadvantaged individuals exists under federal law through mandatory contract "set-asides." See Steven K. DiLiberto, Comment, *Setting Aside Set Asides: The New Standard for Affirmative Action Programs in the Construction Industry*, 42 Vill. L. Rev. 2039, 2040 n.3, 2052 (1997) (identifying, as of 1997, various federal statutes that provided for construction contract set-asides, and estimating more generally that "over 160 programs on the federal level use some form of racial classification to assist minorities in obtaining opportunities with the federal government"). The most important of these statutes is section 8 of the Small Business Act ("SBA"), 15 U.S.C. § 637. That provision addresses in separate subsections bidding preferences for "socially" and "economically disadvantaged" persons, with an objecting of setting aside at least five percent "of the total value of all prime contract and subcontract awards for each fiscal year" set aside for the preference. *Id.* § 644(g)(1); see *Aradaram Constructors, Inc. v. Slater*, 228 F.3d 1147, 1188-90, 1191-92 (10th Cir. 2000) (describing statutory provisions and recent modifications to implementing regulations), *cert. dismissed as improvidently granted*, 534 U.S. 103 (2001). Under regulations promulgated by the Small Business Administration implementing section 8(a), "Native Americans" are deemed "socially disadvantaged" for direct government contracts but not for "economically disadvantaged" status. 13 C.F.R. § 124.103(b). The presumption of socially disadvantaged status "may be overcome with credible evidence to the contrary," but it appears that such showing must be made before eligibility for award of a section 8(a) contract is determined. *Id.* §§ 124.103(b)(3), 124.517(a). Section 8(d)(3)(C)(ii) and implementing regulations establish a presumption of both "socially" and "economically disadvantaged" status for Native Americans as to subcontracts from government contractors if their net worth is less than \$750,000. 13 C.F.R. § 124.1008(c)(1)(i). In the section 8(d) context, the Administration's determination of "socially and economically disadvantaged" status for a "small disadvantaged business" ("SDB") may be challenged by a competitor "only if the protest

presents credible evidence that the [SDB's] circumstances have materially changed since the [Administration] certified it as an SDB[] or that the firm's SDB application contained false or misleading information." 13 C.F.R. § 124.1021(c).

No definition of "Native Americans" is contained in the SBA, but agency regulations provide that the term encompasses "American Indians, Eskimos, Aleuts, or Native Hawaiians." See 13 C.F.R. § 124.103(b)(1). Those regulations do not establish criteria for determining "American Indian" status, and the Small Business Administration has not issued interpretative guidelines. My understanding of section 8(a) regulations' implementation is that an applicant seeking a contracting preference initially self-identifies as, for example, an American Indian and that the agency then determines on a case-by-case basis whether the applicant is economically disadvantaged by virtue of such status. In resolving any question over "American Indian" status, the agency may consider factors such as whether the applicant holds him- or herself out as an Indian, whether the applicant is recognized by federal, state, or tribal entities as an Indian, and whether the public views the applicant as an Indian. See 13 C.F.R. § 124.103(b)(2). Neither tribal membership nor a minimum blood quantum is necessary. It is therefore possible that an individual with a small amount of "Indian blood" can qualify for a set-aside by virtue of "American Indian" status. Applicants for SDB designation under section 8(d) also must self-identify, but the implementing regulations provide that the agency may accept such representation as true "[a]bsent credible evidence to the contrary." *Id.* § 124.1008(e)(1)(ii).<sup>2</sup>

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<sup>2</sup> The construction given the term "Native American" or "Indian" where contract set-asides or other contracting preferences are involved may be affected by constitutional considerations. A presumption of socially and/or economically disadvantaged status that derives from ancestry implicates racial discrimination concerns. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (directing "strict scrutiny" standard to be applied on remand to assess validity of United States Department of Transportation program under which financial bonuses were awarded to prime contractors for using minority subcontractors). One circuit court of appeals has held that post-*Adarand* amendments to section 8's implementing regulations adequately address the potential constitutional infirmity. *Adarand Constructors*, 228 F.3d at 1187. This issue nevertheless appears unresolved. See generally Clark D. Cunningham *et al.*, *Passing Strict Scrutiny: Using Social Science to Design Affirmative Actions Programs*, 90 Geo. L.J. 835, 871 (2002) (criticizing post-*Adarand* set-aside procedures as changing "only slightly" in response to Supreme Court's decision). Perhaps more problematic are direct employment- or business-related preferences for Native Americans. Such direct preferences may well require a showing of "Native American" status based on tribal membership to avoid substantial constitutional concerns. In *American Federation of Government Employees v. United States*, 195 F. Supp. 2d 4 (D.D.C. 2002), for example, the court rejected a Due Process Clause-based challenge to an appropriations bill provision exempting Native American majority-owned firms from certain limitations on agency's authority to contract out functions performed by federal employees. In so holding, it accepted the involved agency's position that the exemption applied only to "Native Americans who are affiliated with tribal entities." *Id.* at 22. This construction of the appropriations provision allowed the court to distinguish *Adarand* on the ground that the exemption is political, not racial, in character.

C. Conclusion

Federal law defines the term "Indian" and related terms in various ways. Those definitions differ in material respects. It can be argued that they are not technically in "conflict" because "Indian" status can exist for some purposes but not others. One combination of statutes illustrates this point tellingly: A child might not be an "Indian child" for purposes of protection under the Indian Child Welfare Act which requires the child to be (1) a member of a tribe or (2) eligible for membership and the biological offspring of a tribal member (25 U.S.C. § 1903(4)) but would be deemed an "Indian" under the Indian Civil Rights Act or federal criminal law if satisfying the federal common law test. Federal law controls "Indian" status determinations, and, in response to your question, Idaho may not adopt independently "a common sense bloodline standard in law." As discussed above, there also may be differences among federal agencies in construing the term "Native American" or "American Indian" under set-aside or similar statutory preference provisions depending upon the nature of the involved preference.

II. State Taxation Authority Within Indian Reservations

A. General Considerations

You pose a number of questions concerning the authority of Congress or the States to tax "Indians" and non-"Indians." In this context, as in other civil regulatory contexts, it is essential to focus on tribal member status, not on "Indian" status. The United States Supreme Court has made clear in a series of decisions beginning with *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), that state civil regulatory authority on Indian reservations is the same for nonmember Indians—*i.e.*, persons who are Indians but not members of the reservation's governing tribe—as it is for non-Indians. So, for example, Idaho's taxing power on the Coeur d'Alene Reservation is the same for a member of the Nez Perce Tribe as it is for a non-Indian. This principle reflects the notion that the immunity possessed by Indians from on-reservation application of state law lies in the unique political relationship they possess with their tribe and not simply in their status as Indians. Consequently, the following analysis of state taxation authority will use the term "tribal member" rather than "Indian."<sup>3</sup>

The basic rules governing federal and state taxation of tribal members within their reservations are straightforward: Application of a federal tax is always permissible unless Congress has expressly provided an exemption from the particular tax, but application of a state tax on a tribal member's reservation-based activity or property is

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<sup>3</sup> Your letter inquires concerning the validity of not only state taxes but also local taxes. Because the same principles apply to both forms of taxation, I discuss the involved issues only with reference to state taxes.



prohibited absent clear congressional authorization. *Ramsey v. United States*, 302 F.3d 1074, 1078 (9th Cir. 2002). Consequently, virtually all federal taxes are borne by Indians in the same manner as non-Indians, since there are few requisitely explicit congressional exemptions. *E.g.*, *Chickasaw Nation v. United States*, 122 S. Ct. 528 (2001). The opposite result exists where state taxation is at stake. *California v. Cabazon Band of Mission Indians*, 480 U.S. 207, 215 n.17 (1987).

The standards controlling state taxation of nonmembers within Indian reservations are less bright-line. Outside the situation where the state tax relates to a commercial relationship of the nonmember with the resident tribe or a tribal member, state tax authority exists absent a congressional directive to the contrary. *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 257-58 (1992). When the state tax is imposed on a nonmember with respect to a commercial or other relationship with a tribe or a tribal member, the Supreme Court has adopted a preemption test that balances applicable federal, state, and tribal interests. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). The latter test has been employed by the Court in numerous cases over the last two decades, and those decisions bring a significant measure of clarity concerning state taxation authority as to those areas particularly mentioned in your letter.

B. Specific Inquiries

First, nonmembers are subject to state taxation with respect to income earned from reservation employment regardless of the employer's tribal affiliation and purchases made from nontribal members. Nonmembers ordinarily also will be subject to state sales or other excise taxes with respect to purchases from tribal businesses. The latter situation has produced substantial litigation before the United States Supreme Court—beginning with *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976), and continuing through, most recently, *Department of Taxation and Finance v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61 (1995)—and the Court has upheld without exception the state authority to impose nondiscriminatory taxes on nonmembers' on-reservation purchases of consumer items such as cigarettes and motor fuel from tribal enterprises. Some courts have suggested that the result may differ if, prior to sale, a tribe or a tribal retailer has added "value" to the item such as reformulating gasoline on reservation. It should be noted that States may tax on-reservation liquor transactions by both tribal members and nonmembers pursuant to 18 U.S.C. § 1161 which authorizes regulation of such transactions by States and tribes.

In Idaho, "sales occurring within the boundaries of an Indian reservation located in Idaho when the business or enterprise is wholly owned and operated by an Idaho Indian tribe" are exempted from sales tax imposed under Title 63, Chapter 36. Idaho

Code § 63-3622Z. This exemption thus does not apply to sales by retailers who are tribal members operating their own businesses. I am informed that the State Tax Commission makes no attempt to enforce the cigarette and tobacco tax imposed under Title 63, Chapter 25 from wholesalers with respect to sales or distributions made to tribal smokesshops on reservations in this State.

Second, your letter poses questions about the scope of "Indian lands" where the special Indian law preemption standards with respect to taxation apply. It is now settled that those standards control throughout "Indian country" as defined in 18 U.S.C. § 1151. *Oklahoma Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114 (1993). Section 1151 encompasses Indian reservations, dependent Indian communities, and allotted lands whose title remains in trust or subject to a restriction against alienation. The component of the Indian country definition relevant to your inquiry is the reservation component. Transactions on any land within a reservation—regardless of ownership—are subject to the special preemption standards.<sup>4</sup>

Third, you ask whether there are "options to cause Indians to pay their fair share of the cost of roads." A principal source of revenue for the highway distribution account is the motor fuels tax. Idaho Code §§ 2401 to 2443. As you know, the Idaho Supreme Court invalidated the fuels tax's application to tribal retailers on the Coeur d'Alene Reservation in *Goodman Oil Co. v. State Tax Commission*, 28 P.3d 996 (Idaho 2001), *cert. denied*, 122 S. Ct. 1068 (2002), where it rejected the State's contention that the tax was authorized expressly under the Hayden-Cartwright Act, 4 U.S.C. § 104, and that the tax's legal incidence fell on the distributor. A federal district court further held recently that the Legislature's 2002 amendments to the tax failed to shift the legal incidence from the retailer to the distributor and agreed with the Idaho Supreme Court that the Hayden-Cartwright Act does not authorize the State to impose the tax on tribal retailers. *Coeur d'Alene Tribe v. Hammond*, No. CV02-0185-S-BLW *et al.* (D. Idaho Aug. 16, 2002). An appeal to the Ninth Circuit is now being considered. If an appeal is taken and prosecuted successfully, *all* transactions subject to fuels tax on Idaho's Indian reservations would be

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<sup>4</sup> The only current dispute as to the geographical scope of the Indian reservations in this State involves the Nez Perce Reservation. That dispute centers on the effect of an 1893 agreement, 28 Stat. 286, 326 (1894), between the United States and the Nez Perce Tribe under which the Federal Government purchased portions of the reservation created under the 1863 Treaty with the Nez Percés, 14 Stat. 647 (1863). The State believes, and is contending in ongoing state court proceedings, that the 1893 agreement diminished the reservation and that it now consists of only those lands not sold under the agreement. The Ninth Circuit Court of Appeals has suggested, but not held directly, that the 1893 agreement left the reservation's boundaries intact. *United States v. Webb*, 219 U.S. 1127 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). The Court of Appeals' decision in this respect conflicts with *Dick v. United States*, 208 U.S. 340 (1908), where the United States Supreme Court held that a portion of the reservation ceded under the 1893 agreement was no longer "Indian country" as such term was used prior to the enactment of § 1151. The scope of the Nez Perce Reservation is an important question that remains to be resolved.

taxed—the result that the State believes Congress contemplated under the Hayden-Cartwright Act.

Finally, you pose two questions about the tax responsibility of nonmember Indians and Idaho tribal members living outside this State. The first question has been answered earlier: Nonmember Indians are treated identically to non-Indians for taxation purposes. The second question is rather broad and therefore more difficult to respond to definitively. To the extent the question is intended to ask whether a member of an Idaho tribe residing, for example, in the State of Washington is subject to Washington taxes, the answer is yes since, as an ordinary matter, once off reservation a tribal member is subject to state law in the same fashion as other persons. To the extent the question is intended to ask whether this State could tax transactions occurring or income earned in Idaho by a member of an Idaho tribe residing outside the State, more facts are necessary for a meaningful answer. Several examples may be helpful to show possible variations. A tribal member living off reservation in Idaho will be subject to occupational income earned on reservation absent a contrary congressional or treaty directive. Whether that member will be subject to Idaho income tax with respect to employment if he or she lives in Washington would be resolved under the same rules as a non-Indian earning occupational income in this State but residing elsewhere. However, if a Cocur d'Alene tribal member purchases cigarettes on the Cocur d'Alene Reservation, that member will not be subject to the Idaho tax regardless of domicile.

### III. Social Cost Responsibility

You inquire concerning the "legal obligation [of] Indians to pay for the social aftermath of their actions in Idaho." This question cannot be answered in the abstract; *i.e.*, it must be addressed only through legal analysis directed to particular factual situations. Simply put, legal remedies or ameliorative responses may be available in some instances and not others. The two general examples raised in your letter reflect the need for individualized consideration.

Where alleged criminal conduct by an Indian within a reservation is at issue, it must be remembered that federal or tribal courts, and perhaps both, will have jurisdiction. That conduct therefore should not escape appropriate redress. The cost attendant to prosecution will be borne by the prosecuting agency.

As for the impact of any economic advantage gained over nonmember competitors from inapplicability of state taxes, the answer lies in limitations or remedies that may exist under federal law. The earlier discussion in connection with state taxing authority indicates that many transactions between tribal retailers and nonmembers can be taxed. The United States Supreme Court in this regard has frowned upon tribes simply

"market[ing] an exemption from state taxation to persons who would normally do their business elsewhere." *Colville*, 447 U.S. at 155. Nonmembers purchasing cigarettes or gasoline thus can usually be taxed with respect to those transactions, and tribal retailers can be required to collect and remit the tax. While tribal members themselves cannot be taxed for on-reservation purchases absent congressional consent, the impact of their exemption from taxation on competitors appears minimal because no price advantage as between tribal and nontribal retailers results. State legislatures through carefully drawn statutes and administrative agencies through rigorous enforcement of those statutes can eliminate or reduce significantly the potential for competitive advantage for tribal businesses arising from tax differentials.

Indian gaming in Idaho and other States is governed by the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721. A detailed review of IGRA's complex regulatory scheme is outside the scope of this letter. It is enough for present purposes to recognize that the most lucrative form of Indian gaming, including activities that compete directly with the Idaho State Lottery, are deemed "class III gaming" and can occur only through the mechanism of a tribal-state compact. Such compacts, in turn, can permit only those forms of gaming otherwise authorized under Idaho law. *See* 25 U.S.C. § 2710(d)(1)(B). Competition between tribal class III gaming and comparable off-reservation gaming thus is a byproduct of IGRA's scheme. The concerns that you raise over the possible effect on the State Lottery, in short, arise out of a federal statute whose terms the Legislature has no ability to affect.

#### IV. Economic and Population Information

You ask several questions that relate to largely non-legal matters, such as an inventory of governmental benefits Indians are entitled to receive, "direct federal and state cash or service payments [received by] Idaho Indians," and population data. The answers to these questions are outside the expertise of this office, but I will address them to the extent information has been compiled already from public sources of which I am aware.

Indians are entitled to the same governmental benefits as non-Indians, and I therefore assume your inquiry is directed to governmental benefits Indians receive by virtue of their status as Indians. To my knowledge, under Idaho law there are no such benefits. Under federal law, there are myriad programs providing specialized services or benefits to Indians. The most important of these programs are those administered by the BIA, the Indian Health Services ("IHS") and the Department of Education.

The BIA prepares budget justification materials in connection with its annual appropriation requests. I have requested the most recent BIA justification submission and

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October 9, 2002

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will forward it to you upon receipt. The fiscal year 2002 IHS budget justification appears at [http://www.ihs.gov/AdminMngrResources/Budget/FY\\_2002\\_Budget\\_Justification.asp](http://www.ihs.gov/AdminMngrResources/Budget/FY_2002_Budget_Justification.asp). Indian education expenditures are devoted principally to grants to local education agencies serving Indian children and funding special programs for such children. The total appropriation in fiscal year 2002 for those and other Indian education-related matters was approximately \$120.4 million, with an actual outlay of \$113 million; the fiscal year 2003 appropriation request is \$122.4 million, with total outlays estimated at \$118.7 million. These data are summarized on the agency's website at <http://www.ed.gov/offices/OUS/Budget03/Summary/App2/oesc4.html>.

You additionally requested information concerning the amount of direct federal and state cash or service payments to Idaho residents who are Indians. I have not located data responsive to your request and doubt that they have been compiled.

The Bureau of the Census recently released various compilations of Native American population 2000 Census data for Idaho. Those data show that 27,237 persons self-identified themselves as being American Indian or Alaska Native either alone or in any combination of races. U.S. Census Bureau, *American Indian and Alaska Native Tribes for Idaho: 2000, Table 27* (Sept. 2002), available at <http://www.census.gov/population/cen2000/phc-t18/tab027.pdf>. Within that number, 6986 persons identified the following Idaho tribes as their enrolled or principal tribe: Coeur d'Alene Tribe (858); Kootenai Tribe (110); Nez Perce Tribe (1962); Paiute-Shoshone Tribe—Duck Valley (37); and Shoshone-Bannock Tribe (4019). *Id.* The number persons self-identified with an Idaho tribe either alone or in combination with any other tribe or race was 7700: Coeur d'Alene Tribe (894); Kootenai Tribe (120); Nez Perce Tribe (2310); Paiute-Shoshone Tribe—Duck Valley (41); and Shoshone-Bannock Tribe (4335). *Id.*

I hope this letter responds adequately to your questions. Thank you for the opportunity to review these matters with you.

Sincerely,



CLAY R. SMITH

Deputy Attorney General

CRS/jlh



October 24, 2002

The Honorable Hal Bunderson  
582 River Heights Drive  
Meridian ID 83642

RE: State taxation authority within Indian reservations

Dear Senator Bunderson:

This letter is in response to our recent telephone conversation. You requested information from the Tax Commission concerning taxation of nontribal members within the confines of an Indian reservation located in Idaho. You specifically raise questions concerning the Idaho fuels tax, sales tax, and cigarette tax. I will address the various taxes separately in this letter.

The issue of fuel tax imposition on Indian reservations is currently being litigated in consolidated cases involving the Coeur d'Alene, Nez Perce, and Shoshone-Bannock Tribes versus the four individual tax commissioners. Appeals have been filed with the Ninth Circuit Court of Appeals. It is the State's position in this litigation that the recent amendments to the Idaho Code with respect to motor fuel taxes are sufficient to place the legal incidence of the tax on distributors and that this is sufficient to allow the state to collect the tax. Further amendment at this point is superfluous.

You raise questions concerning the imposition of Idaho sales and use tax within the confines of reservations located within Idaho. Idaho Code § 63-3622Z provides a specific exemption from imposition of the sales tax when sales are made through tribally owned enterprises. Deductions are purely a matter of legislative grace, and this code section could be repealed by the Idaho Legislature.

The repeal of Idaho Code § 63-3622Z would eliminate the legislated state exemption for sales and use taxes made on the reservation by tribally owned enterprises. As noted in the analysis contained in the letter to you from Clay Smith, Deputy Attorney General, the State can subject nonmembers of the tribe to the Idaho sales and use tax upon sales made within the boundaries of the reservation. Sales currently made by nontribally owned enterprises are subject to the Idaho sales and use tax when sales are made to nontribal members.

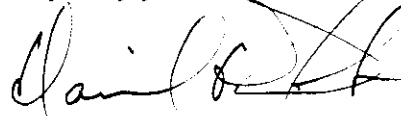
The Honorable Hal Bunderson  
October 24, 2002  
Page 2

The third tax about which you raised a question was the Idaho cigarette tax and the authority of the Tax Commission to enforce the provisions of the Cigarette and Tobacco Tax Act within the bounds of the reservation. The cigarette tax statute is not clear as to who bears the legal incidence of the tax. The Idaho cigarette tax would need to be amended to clearly place the legal incidence of the tax on the consumer with a duty to collect by the wholesaler. Under this scenario, tribal members within the reservation would be allowed to purchase cigarettes tax-free and nontribal members would be required to pay the Idaho cigarette tax. Current estimates of sales made through outlets on Indian reservations range as high as one-third of the total volume of cigarettes sold in the state of Idaho. We estimate, however, that any revenue gained from amending the Idaho cigarette tax and the ability of the Tax Commission to enforce the tax would generate revenues well below what is indicated by the current amount of sales made through reservation outlets.

Although it appears that a few minor changes to Idaho statutes would allow the Tax Commission to enforce the sales and use as well as cigarette taxes on reservations, the application may be more difficult than it would appear. Getting cooperation from the tribes to enforce the Idaho tax laws within the confines of the reservation may be difficult at best.

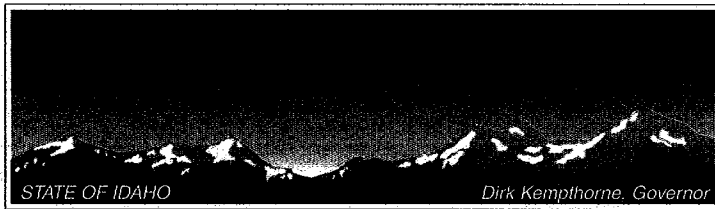
If you have further questions or comments, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel D. John", with a stylized flourish at the end.

Daniel D. John  
Tax Policy Administrator  
(208) 334-7537

DDJ:jd



**TRANSPORTATION DEPARTMENT**  
P.O. BOX 7129 • BOISE, ID • 83707-1129 • (208) 334-8000

November 8, 2002

The Honorable Hal Bunderson  
Idaho State Senate  
582 River Heights Dr.  
Meridian, ID 83642

Subject: Indian Fuels Tax Litigation Impacts

Dear Sen. Bunderson:

Per your telephone request on November 5, the following is provided regarding the fiscal impact to the State of Idaho of the Indian fuels tax lawsuit.

The Idaho Supreme Court ruled that the State of Idaho could not impose the 25-cent per gallon tax on fuel purchased at tribally owned retail stores, regardless if the purchases were made by Indians or non-Indians. The legislature responded with legislation that clarified that the incidence of the tax is upon the distributor of the fuel (non-tribal) rather than the retailer (tribal). The new legislation was challenged in federal court by the tribes and the District Court ruled for the tribes. The decision is now on appeal in the 9<sup>th</sup> Circuit Court of Appeals.

At stake is the prospective distribution of taxes paid on fuel sold at tribal outlets as well as claims from the tribes to recover taxes collected on reservation sales since September 1996 when the initial lawsuit (Goodman Oil v Idaho State Tax Commission) was filed. (One of the tribes has claimed refunds for sales going back twenty or more years.)

The Tax Commission yesterday afternoon verified the estimated impacts of the two issues:

- Based on historical fuel taxes paid, the estimated prospective impact to the Highway Distribution Account is \$1.8 million annually. The Idaho Transportation Department, cities, counties and highway districts share in that account by formula identified in Section 40-701, Idaho Code; copy attached.
- Refund claims are estimated at \$15.8 million [\$10 million plus interest from September 1996 through June 30, 2003].



Sen. Hal Bunderson  
Page 2  
November 8, 2002

Pending final outcome of the litigation, the 25-cent per gallon tax is being collected and held in escrow – either by the distributors or by the Tax Commission.

If we can provide further information, please let me know or contact the Tax Commission at 334-7500.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary".

Mary F. Detmar, Manager  
Office of Budget, Policy & Intergovernmental Relations



**STATE OF IDAHO**  
**OFFICE OF THE ATTORNEY GENERAL**  
**ALAN G. LANCE**

October 30, 2002

Hon. Hal Bunderson  
Idaho State Senate  
582 River Heights Dr.  
Meridian, ID 83642

Re: Federal Indian Law Inquiries - *Federal 2003 appropriation  
for American Indian  
programs.*

Dear Senator Bunderson:

As indicated in my October 9, 2002 letter, I had requested from the Bureau of Indian Affairs the agency's most recent budget justification submission to Congress. I did not receive the submission and therefore made another request this week.

In response, a BIA official forwarded to me by e-mail the justification document for fiscal year 2003. Because of the document's length, I concluded that the most practical manner of proceeding is to send you the table of contents, the overview section and a summary table comparing the enacted fiscal year 2002 budget amounts with those requested for fiscal year 2003. If there are any other portions of the document that you would like, please contact me and I will forward them. I also can send you the entire document electronically if that would be more convenient.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay R. Smith".

CLAY R. SMITH  
Deputy Attorney General

CRS/jlh

Enclosures

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

Budget Justification, Fiscal Year 2003

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**SUMMARY TABLE**  
**BUREAU OF INDIAN AFFAIRS**

		<b>FY 2002 Enacted</b>	<b>FY 2003 Request</b>	<b>(+/-) From 2002</b>
<b><u>Direct Appropriations</u></b>				
Operation of Indian Programs	\$(000)	1,799,809	1,837,110	37,301
CSRS/FEHBP Legislative Proposal	\$(000)		21,876	21,876
	<i>FTE</i>	8,405	8,452	47
Construction	\$(000)	357,132	345,252	(11,880)
CSRS/FEHBP Legislative Proposal	\$(000)		1,053	1,053
	<i>FTE</i>	926	927	1
Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians	\$(000)	60,949	57,949	(3,000)
	<i>FTE</i>	—	—	—
Indian Guaranteed Loan Program Account	\$(000)	4,986	5,493	507
	<i>FTE</i>	4	4	0
<b>Subtotal, Direct Appropriations</b>	<b>\$(000)</b>	<b>2,222,876</b>	<b>2,268,733</b>	<b>45,857</b>
	<b><i>FTE</i></b>	<b>9,335</b>	<b>9,383</b>	<b>48</b>
<b><u>Permanent Appropriations:</u></b>				
Miscellaneous Permanent Appropriations	\$(000)	81,411	82,285	874
	<i>FTE</i>	410	410	0
Quarters Operation and Maintenance	\$(000)	5,183	5,236	53
	<i>FTE</i>	59	59	0
CSRS/FEHBP Legislative Proposal	\$(000)		1,480	1,480
White Earth Settlement Fund	\$(000)	2,000	2,000	0
Indian Direct Loan Program Account	\$(000)	4,251	0	(4,251)
Indian Guaranteed Loan Program Account	\$(000)	1,375	0	(1,375)
Indian Loan Guaranty and Insurance Fund Liquidating Account	\$(000)	1,000	1,000	0
<b>Subtotal, Permanent Appropriations</b>	<b>\$(000)</b>	<b>95,220</b>	<b>92,001</b>	<b>(3,219)</b>
	<b><i>FTE</i></b>	<b>469</b>	<b>469</b>	<b>0</b>
<b>Total Budget Authority</b>	<b>\$(000)</b>	<b>2,318,096</b>	<b>2,360,734</b>	<b>42,638</b>
	<b><i>FTE</i></b>	<b>9,804</b>	<b>9,852</b>	<b>48</b>

# BUREAU OF INDIAN AFFAIRS

*My Administration will continue to work with tribal governments on a sovereign to sovereign basis to provide Native Americans with new economic and educational opportunities. Indian education programs will remain a priority, so that no American child, including no Native American child, is left behind. We will protect and honor tribal sovereignty and help to stimulate economic development in reservation communities. We will work with the American Indians and Alaska Natives to preserve their freedoms, as they practice their religion and culture.*

George W. Bush  
November 19, 2001

## OVERVIEW OF FY 2003 BUDGET REQUEST



THE BUREAU OF INDIAN AFFAIRS' MISSION IS TO FULFILL ITS TRUST RESPONSIBILITIES AND PROMOTE SELF-DETERMINATION ON BEHALF OF TRIBAL GOVERNMENTS, AMERICAN INDIANS AND ALASKA NATIVES.

The FY 2003 budget provides the Bureau of Indian Affairs (Bureau) with \$2.3 billion, including \$22.9 million for a government-wide legislative proposal to shift to agencies the full cost of the CSRS pension system and the Federal employees health benefits program for current employees. Without the legislative proposal, the request is \$2.2 billion, a net increase of \$22.9 million over the 2002 level. The table below depicts the FY 2003 request without the legislative proposal.

(Amounts in \$000s)

BUDGET AUTHORITY	FY 2002 ENACTED	FY 2003 PRESIDENT'S REQUEST	FY 2003 Request Changes from FY 2002	
			AMOUNT	PERCENT
Current	2,222,876	2,245,804	22,928	1.0%
Permanent	95,220	90,521	-4,699	-4.9%
Total	2,318,096	2,336,325	18,229	0.8%
Full-Time Equivalents	9,804	9,852	48	0.5%

The Bureau is the primary agency of the Federal Government charged with the responsibility to administer Federal Indian policy and to fulfill the Federal trust responsibility for American Indian Tribes, Alaska Native villages and Tribal organizations. Federal Indian policy and the trust

responsibility are derived from the special legal and political relationship between the Tribes and the Federal Government.

This unique (legal and political) relationship is rooted in American history. Much of Federal Indian policy evolves around this “special” relationship which is often broadly expressed in terms of legal duties, moral obligations and expectancies that have arisen from the historical dealings between Tribes and the Federal Government. In the narrowest sense, the special relationship is described as a trust relationship between a trustee and the beneficiary. The evolution of the trust doctrine over time is primarily the result of U.S. Supreme Court decisions. The Court’s literal references to a “guardian-ward” relationship in several cases has served as the conceptual basis for the existence of the trust relationship doctrine today. While the Supreme Court decisions fell short of defining all the attributes of an enforceable trust responsibility, the U.S. Constitution itself suggests the Nation’s implicit decision to place Indian affairs under Federal control. See, e.g., Article I, §2, cl. 3 which expressly delegates to “*the Congress . . . the power...to regulate commerce with foreign nations, and among the several states, and with Indian tribes.*”

As a source of Federal power, the Congress set the basic framework of Federal Indian policy in enacting the Trade and Intercourse Acts passed between 1790 and 1834. The central policy of the Acts was to subject all interaction between Indians and non-Indians to Federal control. The Acts prohibited non-Indians from acquiring Indian lands, except with the specific approval of the Congress. Trading with Indians was made subject to Federal regulation. The underlying objective of this early Federal policy was to protect Indians against incursions by non-Indians, since exploitation of Indians was one of the major causes of fighting and conflict between Indians and non-Indians on the western frontier. In fact, the Secretary of War was established in 1784 with its primary mission to “negotiate treaties with the Indians” and with the armed militia at the disposal of Indian commissioners. Over the next 50 years, laws regulating trade between non-Indians and Indians were enacted and a network of Indian agents and subagents was established.

When trade restrictions proved ineffective in maintaining peaceful relations between Indians and their neighbors, the Indian Removal Act of 1830 institutionalized the forced removal of Indians. The most notable removal occurred among the Five Civilized Tribes who were taken from their homes in the southeastern states and marched along the infamous “Trail of Tears” to what is now Oklahoma.

By 1849, with the creation of the Department of the Interior (DOI), the Bureau passed from military to civil control, and its primary mission became “civilizing” the Indian people by training them for farming or trades. During this period, the wardship principle developed as those Indians who cooperated were protected and fed, while those who were intractable were “harassed and scourged without intermission”. The General Allotment Act of 1887, the intent of which was to assimilate the Indian by giving him/her individual ownership, institutionalized the continuing efforts to civilize Indians. In the nearly 50 years of the allotment period, Indian land holdings were reduced from more than 136 million acres to less than 50 million acres in 1934 when the policy was completely abandoned.

In response to the Meriam Report, the Congress passed the Indian Reorganization Act of 1934. This brought a halt to the allotment policy and created a foundation for Tribal self-government. Although



Tribes were urged to adopt American-style elected democratic governments, in practice the Bureau continued to direct and influence Tribal affairs to a degree greater than was consistent with notions of self-government.

To expedite assimilation, the Congress shortly thereafter passed several bills terminating the special Federal relationship of Indian Tribes with the United States. Twelve termination acts were passed by the Congress between 1954 and 1962, affecting about a dozen Tribes and several hundred small bands and groups in Oregon and California. The tragic results forced the Federal Government to abandon termination, to de-emphasize its custodial functions, and to focus greater efforts on the development of both human and natural resources on Indian reservations. In 1970, President Nixon called for self determination of Indian people without the threat of termination of the trust relationship over Indian lands. Since that date, self determination has been the basis of Federal-Indian policy.

Today, the Bureau provides services directly, or through self determination contract, grant and compact agreements with Tribes, to more than 1.4 million<sup>1</sup> American Indians and Alaska Natives in 31 states. The scope of Bureau programs is extensive and covers virtually the entire range of state and local government services:

- elementary, secondary and post-secondary education
- social services
- law enforcement
- judicial courts
- business loan guarantees
- land and heirship records
- Tribal government support
- forestry
- agriculture and range lands development
- water resources
- fish, wildlife and parks
- roads
- housing
- adult and juvenile detention facilities
- irrigation and power systems

More importantly, the Bureau's programs are funded and operated in a highly decentralized manner with more than 90 percent of all appropriations expended at the local level with an increasing amount operated by Tribes and Tribal organizations under contracts or self-governance compacts. In addition, the Bureau administers more than 45 million acres of Tribally-owned land<sup>2</sup>, more than

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<sup>1</sup>Source: Indian Labor Force Report, 1999

<sup>2</sup>Source: Annual Report of Indian Lands, 1997

10 million acres of individually owned land<sup>3</sup> held in trust status and more than 309,000 acres of Federally-owned land<sup>4</sup>.

The Bureau is charged with the primary responsibility for administering Federal programs for Federally recognized Tribes, and for carrying out the trust responsibility emanating from treaties, the U.S. Constitution, laws, court decisions and other agreements with American Indian Tribes and Alaska Natives.

In the last two centuries, the Congress has passed more Federal laws dealing with Indian Tribes and Alaska Natives than any other group of people in the United States. While the Snyder Act, the Indian Self-Determination and Education Assistance Act of 1975 and the Indian Education Amendments of 1978 provide the primary budgetary authorities, numerous statutes, court decisions, treaties and other authorities (including those passed in the early 1800's regulating trade with Indians) continue to guide the Bureau's mission and administration. The diversity of these mandates frequently requires the Bureau to balance the inherent conflicts and problems created by more than 200 years of shifting and evolving Federal Indian policy.

No other Federal agency has the complexity and multitude of programs (i.e., land management to law enforcement to education) that the Bureau has in serving the needs of such a diverse consumer.

## **Organization**

The Bureau has two service components reporting to the Assistant Secretary - Indian Affairs:

The *Deputy Commissioner - Indian Affairs* has line authority over 12 Regional Offices, 58 Agency offices, 1 subagency, 28 field stations, and 3 irrigation project offices. The Deputy Commissioner provides program direction and support through the Offices of Trust Responsibilities, Tribal Services, Planning, Budget, and Management Support, Law Enforcement, Facilities Management and Construction, Economic Development, and Administration, and the Trust Management Improvement Project.

The *Director of the Office of Indian Education Programs* supervises 24 education line officers stationed throughout the country and two post-secondary schools. During the 2000-2001 school year, the Office of Indian Education Programs supported the operation of 117 day schools, 54 boarding schools, and 14 dormitories which house Indian children who attend public schools.

The Bureau's headquarters offices are located in Washington, D.C., and Albuquerque, New Mexico. As a highly decentralized organization, nearly 95 percent of the Bureau's staff work is performed in schools, Regional and Agency offices, and other field locations.

At the end of FY 2001, the Bureau's total employment was 9,407 full-time equivalents.

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<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

## **The People We Serve**

The Bureau's programs serve communities that face great challenges. The 2000 Census<sup>5</sup> data illustrates that the total American Indian and Alaska Native population grew to 2.5 million, up from 2.4 million reported in the 1999 update to the 1990 census, and almost five times the population reported in 1960. On the Indian reservations, poverty is still commonplace, unemployment and violence are more than the national average and infant mortality, alcoholism, and substance abuse are far in excess of the rest of America. The 2000 census data is not yet available to evaluate its impact on these socio-economic characteristics and trends in comparison over the past decade.

The Bureau's 1999 Indian Labor Force Report reports that the nation's Indian service population or potential labor force was 1.4 million. Over 40 percent of the workforce in Indian Country remained unemployed – 43 percent in 1999 as compared to 50 percent in 1997. Of the approximately 377,000 adult Indians who were employed in 1999, 33 percent (125,000) were still living below poverty guidelines established by the Department of Health and Human Services. The Bureau expects to have the 2001 Report available for publication in summer, 2002.

Tribal self determination relies on strong Tribal self governance and self-sufficiency. The Bureau plays a critical role in removing obstacles to building and promoting Tribal self determination, strong and stable governing institutions, economic development and human capital development.

The Bureau's programs help Tribes improve the quality of life for their members, Tribal government infrastructure, community infrastructure, education, job training and employment opportunities and other components of long term, sustainable development.

## ***FY 2003 BUDGET SUMMARY***

*"... there were the first people."*

President George W. Bush  
July 26, 2001

As the Trustee for American Indians and Alaska Natives, the Secretary continues to focus on the priority needs in Indian Country that affect the well-being of its citizens for today and tomorrow. The FY 2003 request builds on the Administration's commitment to "leave no child behind" to ensure a strong education foundation for Indian Country's future leaders as well as continues efforts to improve the services and delivery of its programs and trust management responsibilities. The 2003 budget request for the Bureau is \$2.3 billion in current appropriations, including \$22.9 million for a government-wide legislative proposal to shift to agencies the full cost of the CSRS pension system and the Federal employees health benefits program for current employees. Without the

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<sup>5</sup>Source: U.S. Census Bureau, Census 2000 Redistricting Data.

legislative proposal, the request is \$2.2 billion, a net increase of \$22.9 million above the 2002 enacted level.

The budget stresses the resources Tribes need to provide basic reservation programs and develop strong and stable governments, ensure accreditation of Bureau- and Tribally-operated schools, address critical infrastructure needs, and meet the Secretary's trust responsibilities. The Bureau continues to keep administrative costs low. In FY 2003, administrative costs account for only 8 percent of the requested funds as almost 9 of every 10 dollars appropriated to the Bureau is provided directly to programs on Indian reservations. The request allows the Bureau to attain its goals which are designed to meet the commitment to American Indians and Alaska Natives as outlined in its Annual Performance Plan.

The FY 2003 budget request for the Bureau seeks to maintain core existing programs on behalf of its trust responsibilities and commitments to facilitate self determination for American Indians and Alaska Natives. While the Bureau has evolved in its role as trustee for the American Indian and Alaska Natives from the paternalism of the 1800s to its role today as partner, Tribes continue to turn to the Bureau for a broad spectrum of critical and complex programs administered either by the Tribes or the Bureau - from an education system for approximately 48,000 elementary and secondary students; to 25 Tribally Controlled Community Colleges; to the replacement and repair of schools; to law enforcement and detention services on more than 200 reservations; to social services programs for children, families, the elderly and the disabled; to management of the forest, mineral, fishery and farmland resources on trust land; to the maintenance of more than 25,000 miles of roads on rural and isolated reservations; to economic development programs in some of the more depressed areas in the nation; to the implementation of legislated land and water claim settlements; and to the repair of structural deficiencies on high hazard dams.

To reflect more accurately the programmatic responsibilities of the Federal Energy Regulatory Commission (FERC) Activities program and provide necessary budget and management flexibility to coordinate with closely-related programs such as Safety of Dams, the FY 2003 budget proposes to transfer the FERC line item from the Operation of Indian Programs, Non-Recurring Programs to the Construction, Resources Management category.

## ***OPERATION OF INDIAN PROGRAMS***

For FY 2003, the total request for Operation of Indian Programs is \$1.9 billion, including \$21.9 million for the government-wide CSRS/Federal health benefits legislative proposal. Without the legislative proposal, the request is \$1.84 billion, a net increase of \$37.3 million over the FY 2002 enacted level.

### ***Tribal Priority Allocations (TPA)***

TPA provides the principal source of funds for local units of Tribal Government, most of which are small and lack independent resources to meet the increasing costs of Tribal government operations. Tribes depend on TPA funds for basic necessities and services such as child welfare, scholarships, Tribal courts, natural resource management, and other programs critical to improving the quality of life and the economic potential of the reservations. The Congress has given the Tribes the flexibility

to prioritize funds among most of the TPA programs according to their unique needs and circumstances. TPA supports the goals of Indian self-determination by providing Tribes with the choice of programs provided as well as the means of delivery, either by the Tribe or the Bureau.

TPA comprises the majority of the Bureau's operating budget. For FY 2003, the TPA activity is funded at \$775.5 million, an increase of \$23.4 million (3 percent) over the FY 2002 enacted level.

This budget submission includes \$2 million for the Indian Self Determination Fund to replenish funds for new and expanded programs contracted under the authority of *Public Law 93-638*, as amended. Contract Support is requested to be funded at \$133.2 million; it is estimated that 92 percent of reported need will be met in FY 2003 at this level of funding. The Bureau covered 88 percent of reported need in FY 2001 and expects to cover 91 percent of need in FY 2002.

A total of \$85.9 million is requested in the budget for Welfare Assistance, a decrease of \$4 million compared with FY 2002. Reforms in *Public Law 104-193*, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform) have resulted in a reduction in the number of eligible Indian applicants under the program.

To support the Secretary's on-going trust improvement efforts, the Bureau's TPA request includes \$17.7 million in Trust-related program increases for FY 2003 as follows: Tribal Courts (\$4 million), Social Services (\$2.054 million), Agriculture (\$2 million), Forestry (\$1.5 million), Trust Services (\$1.5 million), Real Estate Services (\$2 million); Real Estate Appraisals (\$2.125 million); Probate (\$1.5 million), and Environmental Quality Services (\$1 million).

As a component of the President's Energy Plan, the Bureau has included a total of \$1.062 million within TPA for its components of the Plan to address energy needs in Indian Country: Economic Development (\$585,000) and Natural Resources (\$477,000).

### ***Other Recurring Programs***

Education provides the essential tools in which a child can successfully meet the challenges of the 21<sup>st</sup> century. The FY 2003 budget request of \$522.8 million for School Operations, an increase of \$12.9 million in programmatic funds that will be tied to higher standards and accountability for results in the quality of education provided to our youth. The Bureau is responsible for the only major domestic elementary and secondary education system operated by the Federal Government; the other education system managed by the Federal Government is operated by the Department of Defense. As such, it is incumbent that this system incorporates high standards, ensures more accountability, and closes the achievement gap that currently exists. To this end, a cornerstone of the President's education initiative is to empower more local control of Bureau-operated schools through Tribes contracting/compacting schools or entering into partnerships with private enterprise to manage the schools. The privatization initiative includes program increases totalling \$11.9 million: \$5 million for the Indian School Equalization Program (ISEP) - Program Adjustments to address costs in privatization such as contract evaluation, monitoring, and oversight, and potential teacher displacement costs; \$2 million for Student Transportation; \$1.9 million for Facilities Operations; and, \$3 million for Administrative Cost Grants. In building further on a sound education base, the request includes \$3 million for Early Childhood Development for expanding the Family and Child Education (FACE) program to 7 additional schools. A reduction of \$2 million is sought

in the ISEP (Formula Funds) program to reflect alignment of budgetary needs with the most recent actual student enrollments.

A total of \$9.669 million is proposed for reduction in programmatic funding to address Indian Country priorities on a nationwide basis: Tribally Controlled Community Colleges (\$2 million); Irrigation Operation and Maintenance (\$480,000); Rights Protection Implementation (\$3.826 million); and Tribal Management/Development Programs (\$3.363 million).

### ***Non-Recurring Programs***

The Bureau requests \$67.5 million in FY 2003, a reduction of \$5.3 million below the FY 2002 Enacted level. Increases are requested for the Minerals and Mining program (\$1 million) as a component of the Bureau's Energy Plan in concert with the Administration's national plan and for Real Estate Services (\$1.5 million) to continue trust improvement efforts in Indian Country. The requests continues critical resource and trust management programs.

### ***Central Office Operations***

The request includes an additional \$14.154 million in support of the Secretary's efforts to improve trust management in the Bureau. To provide stable base funding within the Bureau's budget for the Attorney Decision-makers hired in 2001 as part of the reform effort, a total of \$2.2 million is requested. To institutionalize the trust reform improvements being made today, \$3.5 million is requested to establish a trust operations center for the "day after" trust reform revolves into daily trust operations. To continue the Bureau's efforts on oversight and monitoring of its trust reform efforts, an increase of \$1.855 million is requested for the Trust Management Improvement Project Office in FY 2003; the Office serves as the management core for the Bureau for all the components of the Bureau's trust improvement efforts. To continue security enhancements, \$1.1 million is requested for the Bureau's Office of Security to continue to strengthen and perform the security and background check program for the Bureau. Funds will be used for computer software, hardware and security controls to maintain the program's investigative database and to assist with operational expenses. A total of \$5.5 million is requested to improve the Bureau's information resources management; recent action by the Court in *Cobell v. Norton* illustrated the prevalent need for more investment in technology improvements and information technology security upgrades.

### ***Regional Office Operations***

An increase of \$1.5 million is requested as part of the overall trust management improvement effort at the Regional level: Minerals and Mining (\$1 million) and Land Titles and Records Offices (\$500,000).

### ***Special Programs and Pooled Overhead***

With new detention centers becoming operational during FY 2003 in Indian Country, the Bureau requires an additional \$3 million for its Facilities Operations line item. Existing detention facilities in Indian Country are overcrowded and in need of many repairs; having additional centers on-line will assist with this situation. Reductions are sought in Employee Displacement funds (\$2 million) as Tribal contracting/compacting has reduced in its overall impact on the number of Federal employees displaced by contracting/compacting of Bureau programs. A total of \$7.571 million is requested to be discontinued for programs not deemed national in scope.

## **CONSTRUCTION**

The Bureau's request for the Construction appropriation is \$346.3 million, including \$1.053 million for the government-wide CSRS/Federal health benefits legislative proposal. Without the legislative proposal, the request is \$345.3 million, a net decrease of \$11.9 million. Of the overall request, the Education Construction program is \$292.7 million, equal to the 2002 funding level and approximately 85 percent of the Construction account. The Bureau will continue the emphasis on Tribal contracting for projects, providing support from the Bureau's Office of Facilities Management and Construction until the Tribes and Agencies are fully trained to take over the construction contracting challenge. The Bureau also regularly examines the condition of its facilities to identify health and safety deficiencies and uses a Facility Condition Index to determine whether it is more cost efficient to repair or replace a facility.

The Replacement School Construction program funds replacement of older, unsafe, and dilapidated schools based on a project priority list. In January 2001, the Bureau updated the priority list to add 7 new schools for a total of 20 schools on the list. Of these 20 schools, 11 priority projects have been fully funded through FY 2002. In 2003, \$120.2 million is requested to complete construction of the following 6 projects:

- Santa Fe Indian School (Phase II), New Mexico
- Kayenta Boarding School, Arizona
- Tiospa Zina Tribal School, South Dakota
- Wide Ruins Boarding School, Arizona
- Low Mountain Boarding School, Arizona
- St. Francis Indian School, South Dakota

In addition, \$5 million is requested for advance planning and design for new replacement projects, including the 3 schools remaining on the current priority list.

The education facilities improvement and repair program is funded at \$164.4 million, an increase of \$2.8 million over the 2002 enacted level, to address critical health and safety concerns at existing education-related facilities. This request will fund maintenance and major and minor repair projects to reduce the significant backlog of needed repairs. It also continues funding annual maintenance needs at 100 percent of reported needs.

## **INDIAN LAND AND WATER CLAIM SETTLEMENTS AND MISCELLANEOUS PAYMENTS TO INDIANS**

This program provides payments to meet Federal requirements for legislated settlements. The FY 2003 budget request includes \$57.9 million for payments for settlements resolving long standing Tribal claims to water and lands. To complete the remaining Federal commitment for the Shivwits Band of Paiute Indian Tribe of Utah water settlement, \$16 million is requested for the Bureau in FY 2003 and \$3 million is requested under Departmental Management for water rights and habitat acquisition. This combined request will complete the Federal commitment for the Shivwits

settlement. For the second of three payments mandated by law for the Santo Domingo settlement, \$3.1 million is requested. Reduced funding is requested for the Rocky Boy's Settlement to \$5.1 million, which will complete the Federal funding commitment for this settlement. The request maintains funding at \$24.7 million for the Ute Indian Rights and \$8 million for the Colorado Ute/Animas LaPlata Settlement.

## **INDIAN GUARANTEED LOAN PROGRAM**

To fully utilize the provisions of the law governing this program, the Bureau's request includes an increase of \$500,000 to implement insured loans and extend the Indian Guaranteed Loan program into new markets to finance small Indian businesses and to develop equity financing opportunities for Tribes and individual entrepreneurs.

## **GOVERNMENT PERFORMANCE AND RESULTS ACT**

As mandated by the Government Performance and Results Act (GPRA) of 1993, the Bureau has submitted its fifth Annual Performance Plan which outlines the Bureau's goals and measures. As this is an evolving process, the Bureau continues to refine its measures to better reflect its performance and activities in meeting its mission responsibilities. The Bureau fully supports the Secretary and the Administration's efforts for budget and performance integration in linking investments with performance and outcomes. It will be working with the Department as it revises its Strategic Plan to ensure consistency with its performance goals, measures and targets.

## **ADMINISTRATIVE COSTS**

The Bureau continues to provide over 90 percent of its appropriations towards program functions, with less than 8 percent expended for administrative responsibilities. Denoted below is a table illustrating a comparison of administration and program function funds.

		Amounts in 000s					
		FY 2001	% of Total	FY 2002	% of Total	FY 2003 RQ	% of Total
TPA	General Administration	23,497	1.1%	24,815	1.1%	25,461	1.1%
COP	General Administration	46,918	2.2%	47,057	2.1%	55,743	2.5%
ROP	General Administration	24,679	1.2%	29,407	1.3%	29,040	1.3%
SPP	General Administration	80,065	3.7%	80,477	3.6%	81,152	3.6%
	<b>Subtotal</b>	<b>175,159</b>	<b>8.2%</b>	<b>181,756</b>	<b>8.2%</b>	<b>191,396</b>	<b>8.52%</b>
	Programs	1,962,458	91.8%	2,041,120	91.8%	2,054,408	91.5%
	<b>Total Appropriations</b>	<b>2,137,617</b>	<b>100.0%</b>	<b>2,222,876</b>	<b>100.0%</b>	<b>2,245,804</b>	<b>100.0%</b>



# INITIATIVES

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## EDUCATION

*Indian education programs will remain a priority, so that no American child, including no Native American child, is left behind.*

George W. Bush  
November 19, 2001

### ***REPLACEMENT SCHOOL CONSTRUCTION***

The request for School Construction is \$292.7 million, or 85 percent of the Bureau's total FY 2003 Construction request. The Bureau proposes to fund construction of the next 6 schools listed on the Education Facilities Replacement Construction Priority List as of January 2001:

Rank	Project	State	Amount
9b	Santa Fe Indian School (Phase II)	NM	15,303,000
13	Kayenta Boarding School	AZ	33,605,000
14	Tiospa Zina Tribal School	SD	13,500,000
15	Wide Ruins Boarding School	AZ	21,215,000
16	Low Mountain Boarding School	AZ	22,500,000
17	St Francis Indian School	SD	14,100,000
<b>TOTAL</b>			<b>120,223,000</b>

For Advance Planning and Design, the Bureau request includes \$5 million for FY 2003.

The Bureau's request is part of the Department's Five Year Maintenance and Capital Improvement Plan. As a participant in the Plan, the Bureau is moving forward to eliminate its backlog of code and standard deficiencies. Projects included in the Plan outline the comprehensive strategy of the Department to address the most critical needs in the Bureau's backlog of construction and maintenance requirements. The Plan also encompasses the President's commitment to eliminate the 2001 reported backlog of \$942 million in deferred maintenance, repair and improvement projects in 2006. The requested funding for replacement school construction is a key factor in "leaving no child behind" and will greatly assist in reducing the backlog of construction needs.

The FY 2003 request also includes \$164.4 million for Education Facilities Improvement and Repair (FI&R) to improve the safety and functionality of facilities for the program's customers. In FY 2003, the FI&R program plans to:

- award 10 major FI&R projects;
- replace approximately 41 roofs;
- provide 32 portable classrooms; and
- demolish 14 buildings (excess space).

In addition, the program plans to accomplish multiple minor improvement projects and environmental projects to address such items as life/safety building code violations, fire safety code violations, leaking natural gas lines, structurally unsound buildings, deteriorated interiors, unhealthy restrooms and locker rooms, and removal of hazardous asbestos material. The Bureau will seek to maximize the use of existing educational facilities by improving, rehabilitating or replacing these facilities in lieu of complete new construction. In addition, annual maintenance needs of education facilities will be funded at 100 percent of reported need, which will avoid critical projects from becoming backlogged.

### ***SCHOOL OPERATIONS***

*".... education reform will be the cornerstone of my Administration."*

George W. Bush  
January 20, 2001

As the only nationwide school system operated by the Federal Government that provides basic educational programs solely to the American Indian population, the Bureau fully supports the President's call to "leave no child behind." The Bureau operates, either directly or through Tribal grants and contracts, 185 schools serving approximately 48,000 students (approximately 10 percent of all Indian students in the Country in elementary and secondary schools) in 23 states. The Bureau has a special, historic responsibility for educating Indian children. Most Indian schools are located in isolated, remote rural communities, posing greater challenges and requiring greater operational costs than those typically facing public school districts. In support of the President's commitment, the Bureau has requested a programmatic increase of \$14.9 million for School Operations. Of this total, \$11.9 million is proposed for the Administration's School Privatization Initiative.

The Administration's School Privatization Initiative is focused on improving academic performance at Bureau schools. A recent report by the General Accounting Office<sup>6</sup> found that further improvement is needed in academic performance in Bureau schools. To address this need, the Administration proposes an aggressive effort to utilize competition to improve the educational foundation of American Indian children. For those schools that the Tribes choose not to operate themselves, the Bureau will solicit partnerships with private entities to manage those schools. Throughout this process, the Bureau will consult with Tribes on the Initiative, realizing the vested

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<sup>6</sup>Source: General Accounting Office Report 01-934.

interest shared by all parties in ensuring that the leaders of tomorrow have the educational foundation in which to meet the challenges of the 21<sup>st</sup> century. Individual Indian schools and school boards at the local level will be involved in making the final decisions on how best to utilize funds. This is in concert with the recently enacted legislation, No Child Left Behind Act of 2001, that will help strengthen Bureau funded schools through its support of flexibility and local control of schools. As components of the Privatization Initiative to increase its incentives, the \$11.9 million requested in FY 2003 will provide programmatic increases of:

- \$3 million for *Administrative Cost Grants*, to enable schools to convert to grant status without compromising funding for current grant schools. The requested increase provides for meeting 75 percent of reported need, an increase of 5 percent from the projected FY 2002 level.
- \$5 million for *ISEP<sup>7</sup> (Program Adjustments)* to provide \$3 million to implement the Privatization Initiative (including contract solicitation, monitoring, and oversight) and \$2 million for potential teacher displacement costs.
- \$2 million for *Student Transportation* to provide \$2.37 per mile to meet the costs of the projected 15,407,600 student mileage. Such costs include fuel, maintenance and vehicle leases.
- \$1.9 million for *Facilities Operations* to increase the level of funds provided to meet the operational needs in education facilities.

In the area of early childhood education as highlighted in the President's State of the Union Address, an increase of \$3 million is requested for the Family and Child Education (FACE) program to expand the program to 7 additional schools; the average funding in FY 2003 for the 39 schools in the program will be \$315,000 per school. FACE involves parents more fully in the critical earliest stages of their children's education, improves adult literacy, and teaches parenting skills that help improve children's readiness for school. Investments in family involvement in the learning process and in the earliest stages of education will pay long-term dividends for Indian children and communities. Program evaluations report that schools with a FACE program have a higher level of parental involvement than other Bureau schools and FACE students scored significantly higher than other students on standardized tests of reading and math skills.

To ensure that funds for education are focused in areas of identified need, the request includes a reduction of \$2 million for ISEP to reflect funds provided for the actual student enrollment based on latest figures available.

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<sup>7</sup>ISEP - Indian School Equalization Program.

# TRUST MANAGEMENT IMPROVEMENT REFORMS

*As the Trustee, I clearly recognize the important obligations of the Department to put in place those systems, procedures, and people to fulfill our obligation to the trust beneficiaries, both individual Indians and Tribes. This is an enormous undertaking in correcting the errors and omissions of many decades.*

Secretary Gale A. Norton  
February, 2001

The 2003 budget for trust management improvement reform and operations is based upon the current organizational structure of the Bureau. The Secretary is continuing to hold consultation meetings with Tribes on the reorganization proposal of components of the Bureau and establishment of a separate new organization unit as well as continuing discussions with the Congress concerning the proposed reorganization.

For FY 2003, the Bureau requests \$153.4 million for trust operations and services, including \$34.8 million for the following program increases:

Program		FY 2003 Program Increase
Tribal Priority Allocations	Tribal Courts	4,000
	Social Services	2,054
	Agriculture	2,000
	Forestry	1,500
	Trust Services	1,500
	Real Estate Services	2,000
	Real Estate Appraisals	2,125
	Probate	1,500
	Environmental Quality Services	1,000
Non-Recurring Programs	Real Estate Services	1,500
Central Office Operations	Trust Services	5,700
	Executive Direction	2,955
	Information Resources Technology	5,500
Regional Office Operations	Minerals and Mining	1,000
	Land Titles and Records Offices	500
<b>TOTAL</b>		<b>34,834</b>

Within Tribal Priority Allocations (TPA), an additional \$17.7 million is needed to improve trust programs services at the local, reservation levels. The program increases include \$4 million for Tribal Courts to respond to the increasing responsibilities on Tribal courts to make determinations essential to the use and disposition of trust assets. This shift of responsibility reduces the level of administrative proceedings and controls that otherwise would have to be provided by the Bureau. An additional \$2.054 million for the Social Services program is requested for the increased responsibilities associated with the social services management of Individual Indian Monies (IIM) accounts for minors, adults in need of assistance, adults under legal disability, and adult non compos mentis. A \$2 million increase is requested for the Agriculture program to complete soil and range inventories and resultant conservation management plans on an additional one million acres of trust lands per year; this will improve the Bureau's inventory period average of once every 25 years to once every 16 years. For Forestry, an increase of \$1.5 million is requested for the performance of management activities that support the production of the trust funds that result from the harvest of forest products. The increase will begin to close the gap between the annual allowable harvest of 805 million board feet and the current harvest levels.

Other TPA program increases include \$1.5 million is requested for Trust Services to replace approximately 500 micro-computers for trust system users (Bureau and Tribal). These users are the field personnel such as real estate specialists, land title examiners, and foresters who are responsible for management of Indian trust assets. For Real Estate Services, a \$2 million increase is requested to hire 11 additional FTE to support mineral leasing activities. The additional FTE will enable the Bureau as well as contract and compact Tribes to take a more pro-active role in Indian mineral leasing which should result in an interest from the mineral industry to explore mineral development. Under Real Estate Appraisals, an additional \$2.125 million is needed to contract the preparation of valuations for the processing of the Bureau's trust transactions. The Bureau's appraisal program annually prepares 27,799 valuations per year and these valuations are taking approximately 60 days to prepare, review and accept. This increase in funds will allow for the contracting of the valuation preparation to Tribes under *Public Law 93-638* or other contracting authority as well as private individuals/corporations. This action will reduce the amount of time required to prepare an appraisal from 60 to 30 days. For Probate, an increase of \$1.5 million is requested to assist in maintaining ongoing probate activities and allow for the funding of positions for Tribes who have compacted or contracted the probate program under *Public Law 93-638*, as amended. Under Environmental Quality Services, a \$1 million increase is requested to allow the Bureau to begin to improve the efficiency of its National Environmental Policy Act (NEPA) program that has an effect on the development of Tribal natural resources which may affect the revenues from those lands and resources.

Within the Non-Recurring Programs, an additional \$1.5 million is requested for Real Estate Services to reimburse the Bureau of Land Management (BLM) for expanding the number of cadastral surveys conducted on Indian lands. By statute, the Bureau cannot do these surveys itself and must rely on the BLM for the work.

Under Central Office Operations, an increase of \$2.2 million is requested to establish a stable base of funds for the Attorney Decision-makers (ADMs) hired in FY 2001 and to hire an additional 4 ADMs in FY 2003. ADMs, a direct result of the trust improvement effort, assist the Office of Hearings and Appeals with processing pending probate cases. The ADMs decide without a hearing

certain cases that meet fixed criteria and to which the heirs have no objection. A total increase of \$3.5 million is requested for the establishment of a trust operations center to institutionalize the trust reform improvements being made today. Under Executive Direction, an increase of \$1.855 million is requested for the Trust Management Improvement Project office to establish a stable base of funding as it continues to serve as the Bureau's management core for the various offices involved in trust reform. To continue security enhancements, an increase of \$1.1 million is requested for the Bureau's Office of Security for operational requirements and upgrading of equipment to improve its monitoring and oversight of the Bureau's security program on a nationwide basis. A total increase of \$5.5 million is requested for the Office of Information Resources Management to improve and enhance its information technology needs, which the Court found in *Cobell v. Norton* to be lacking.

Under Regional Office Operations, an additional \$1 million is requested for the Minerals and Mining program to assist the Bureau to consult, communicate and collaborate with Tribes in conservation and development of their energy and mineral resources, including providing technical assistance to assess the mineral potential. A total increase of \$500,000 is requested for the Land Titles and Records Offices to hire 8 additional staff to conduct title examinations to assist in the timely processing of all trust transactions. These increases are necessary for the Bureau to meet its long-term trust goals and continue its efforts under the trust reform initiative.

## **ECONOMIC DEVELOPMENT**

*My Administration will continue to work with tribal governments ... to provide Native Americans with new economic ... opportunities. We will protect and honor tribal sovereignty and help to stimulate economic development in reservation communities. We will work with the American Indians ....*

George W. Bush  
November 19, 2001

## **ENERGY PLAN**

In concert with the President's National Energy Plan, the Bureau developed its Energy Plan to continue its efforts to work in partnership with Tribes in aspects of future development and production of energy resources within their reservations in a citizen-centered effort. While the existing production of Indian owned oil, gas and coal has made significant contributions to national energy supplies, it is believed that there is potential for additional energy production from Indian lands which could provide Tribes with substantial economic development opportunities as well as assist the Nation in whole in having additional available resources. The contribution from Indian lands to national onshore production from 1937 through 1997 was 14 percent (each) for oil and coal and 11 percent for gas. From 1980 through 1999, the contribution of Indian production was 11 percent (each) for oil, gas and coal. Production of energy minerals from Indian lands remains a

significant portion of total Federal onshore production<sup>8</sup>. Production from Indian lands in 2000 was 9.3 million barrels of oil, 299 billion cubic feet of gas, and 21.4 million short tons of coal.

Building on this base further, the Bureau is requesting a total of \$2.062 million for its Energy Plan to assist Tribes with their development and production of energy resources. Within the Tribal Priority Allocations category, funds are requested in the Economic Development line item (\$585,000) to establish work groups to address planning, development and implementation of energy policies, which includes consultation with Tribes concerning trust responsibility and conservation issues. Additionally, funds are requested in the Natural Resources program (\$477,000) to support the infrastructure to supplement the energy leasing expertise and work with Tribes on documenting, cataloging inventory data, and the subsequent geoscientific interpretation. The Bureau will be able to support the NIEMR database and deployment of the National Indian Oil & Gas Management System (NIOGEMS) to more reservations.

Within the Non-Recurring Programs, Minerals and Mining line item, \$1 million is requested to work with Tribes in assessing energy development opportunities and initiatives for all potential sources of energy available on their Tribal lands, identify and review working business models for consideration by energy resource Tribes, and assist Tribes in the assessment of their undeveloped and under developed energy resources (oil, gas, coal, geothermal, uranium and hydro-power) through the collection and interpretation of exploration data to determine value and location of resources for use by the Tribe in their land use planning, negotiations, and development decisions. The Tribes use information from mineral assessment investigations in lease negotiations and decision processes concerning the development of their resources by outside parties.

New development should significantly contribute to the overall national need for energy as well as economically benefitting the Tribes. Following is a summary of the requested increases in FY 2003 for components of the Bureau's Energy Plan:

Program		FY 2003 Program Increase
Tribal Priority Allocations	Economic Development	585
	Natural Resources	477
Non-Recurring Programs	Minerals and Mining	1,000
TOTAL		2,062

## INDIAN GUARANTEED LOAN PROGRAM

The Indian Guaranteed Loan Program provides capital on a reimbursable basis to Tribes, Alaska Natives, and individual Indian-owned businesses to help develop and utilize Indian resources, both physical and human to a point where Indians will exercise responsibility for the utilization and management of their own resources. The Indian Financing Act of 1974 (*Public Law 93-262*) is the

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<sup>8</sup>Source: MMS Minerals Revenue Reports.

source of the authority for the Loan Guaranty, Insurance, and Interest Subsidy programs. In this legislation, the Congress envisioned two ways of encouraging commercial lenders to loan funds to Indian businesses that might otherwise be denied financing. The loan guaranty part of the program caught on with lenders, but the loan insurance aspect did not in the 1970s. Times have changed however, and the Bureau is reintroducing the insured loan features of the Act. There are now numerous, modest Indian business loan proposals that would make insured loans viable.

The proposed increase of \$500,000 will be utilized to implement the insured loan portion of the Indian Guarantee Loan program into new markets to finance small Indian businesses and to develop equity financing opportunities for Tribes and individual entrepreneurs. This increase is expected to provide approximately \$7 million in additional loan subsidies for FY 2003 above the anticipated \$65 million in loan subsidies provided from the base funds of \$4.5 million for the program.